



Commonwealth of Massachusetts State Ethics Commission

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CONFLICT OF INTEREST OPINION EC-COI-87-25

FACTS:

You are a City Councillor in a City. Your sister is a teacher in the public school system and her salary is subject to a collective bargaining agreement between the School Committee and the Teachers Association. There are approximately 1600 association members whose salaries are affected by the provisions of the agreement. The City Council neither negotiates nor formally approves the agreement.

In accordance with the statutory scheme for enacting municipal budgets, the School Committee presents to the Mayor, who, in turn, submits to the City Council, the annual school department budget. See, G.L. c. 44, s.32. Funding for teachers' collective bargaining agreement is contained in the school budget. The City Council votes on the total appropriation requested for the school department but "shall not allocate appropriations among accounts or place any restriction on such appropriations." G.L. c. 71, s.34. Although the City Council may make recommendations to increase or decrease certain line items, such recommendations are non-binding. *Id.* The collective bargaining agreement with the Teachers Association is a two year contract. Last year, the City Council appropriated the necessary money to fund the first year of the agreement. Funding for the second year of the contract is now before the Council. If the City Council votes to reduce the total appropriation for the school department budget, the School Committee will remain bound to honor its contractual obligation with the Teachers Union. See, *Boston Teachers Union, v. School Committee of Boston*, 386 Mass. 197, 203 (1982); see, also G.L. c. 150E, s.7(b). In order to accommodate the reduction, the School Committee would have to make cuts in other areas of its budget.

QUESTIONS:

1. Does G.L. c. 268A permit you to vote on the total appropriation for the School Department budget?
2. Does G.L. c. 268A permit you to participate in making non-binding recommendations on the budget line item which funds the collective bargaining agreement?

ANSWERS:

1. Yes.
2. No.

DISCUSSION:

As an elected City Councillor, you are a "municipal employee" for purposes of G.L. c. 268A. Section 19 of G.L. c. 268A prohibits your official participation in any contract, decision or other "particular matter" [1] in which you or an immediate family member has a financial interest. Official participation includes your action to approve, disapprove, recommend or decide a particular matter, for example, by voting on it or through discussion of it. See, e.g., EC-COI-86-25 and 84-123.

For reasons more fully set forth below, the Commission will not deem the budget figure proposed by the school department in this case to be a "particular matter" as that term is used in the conflict law. Therefore, you may participate in the City Council's vote concerning whether to fund the school department budget. However, specific line items are considered "particular matters," and, therefore, you may not participate in any action concerning line items which affect the financial interests of your immediate family.

1. Adoption of the Consolidated Budget

The Supreme Judicial Court noted in a 1976 decision that the definition of "particular matter" "did not seem apt to refer to the adoption of a budget." *Graham v. McGrail*, 370 Mass. 133, 140 (1976). See, also Braucher, *Conflict of Interest in Massachusetts in Perspectives of Law, Essays for Austin, Wakeman Scott*, (1964) at 26-27. However, the Court further found that [t]he formulation of a budget may include a multitude of particular decisions, and we think both the language and the policy of s.19(a) forbid a school committee member to participate in such a decision when his [immediate familys] private right is directly and immediately concerned, at least if there is any controversy over the decision. *Id.* at 139-140. Consequently, the Court established a process by which a committee member could vote on the total school department budget if a separate vote were taken on the offending line items and he abstained from that separate vote. See, *Graham v. McGrail*, *supra*, at 140. EC-COI-81-62. The *Graham* process for voting on budgets was and, for most boards and committees, still is a viable option to permit a committee member to vote on a budget's bottom line when that member might otherwise be disqualified because of a conflict of interest on a particular line item.

The *Graham* line item process, however, is not available to city councils in their review of school budgets. *Graham* was decided prior to the enactment of Proposition 2 1/2 and, therefore, could not have anticipated the consequences of that legislation.[1] Proposition 2 1/2 provides a limited role for the city council in reviewing the school department budget, prohibiting the city council from taking a separate vote on specific line items, including those which present conflicts. Thus, the city council cannot take advantage of the *Graham* process as it was originally conceived.

Nonetheless, *Graham* is instructive. The Court in *Graham* stated that the conflict of interest law must be given a "workable meaning." *Graham*, *supra* at 140. In this case, the City Council cannot direct the School Committee to increase either particular line

items or the total school department appropriation. The City Council may only reduce the overall budget. In light of this limited role, it is consistent with public policy considerations that the City Council be permitted to perform its governmental function. To prevent a city councillor from voting on a forty million dollar budget because her sister receives a twenty thousand dollar salary which has been contractually negotiated by an independently elected committee seems neither a desirable nor workable result.

The Supreme Judicial Court's statement that the language in the definition of "particular matter" "does not seem apt to refer to the adoption of a budget" is persuasive where, as here, there is no opportunity to influence the amount of any particular line item nor increase the overall budget. Compare, EC-COI-84-123.[3] It is the unique combination of circumstances presented on the facts of this case, including, among other things, the lack of opportunity for the City Council to influence action on line items, to increase the total budget figure, or to engage in the Graham line item process, which leads us to conclude that city councillors with "line item conflicts" may vote on the consolidated budget.[4]

2. Discussion of Budget Line Items

Although the line item process articulated in Graham is technically unavailable here because the City Council cannot vote on line items, it is nonetheless consistent with that decision that a city councillor abstain from participating in any discussion or recommendation concerning those budget items which presents conflicts. Thus, a city councillor may not participate in those specific budget items which would affect her family member's financial interest.

Graham specifically held that the "formulation of a budget may include a multitude of particular decisions .- -," apparently referring to budget line items which are discussed throughout the Graham decision. Graham at 140. There is no question that your participation on those line items which affect the reasonably foreseeable financial interests of your sister is prohibited. EC- COI-84-123. Even though you do not have the statutory authority to vote on line items, the Council can make recommendations to the School Committee with respect to any such line item. It is well established that any such discussion constitutes participation and, consequently, is prohibited. Id. See, G.L. c. 268A, s.1(j).

DATE AUTHORIZED: June 30, 1987

[1] "Particular matter," is defined as any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L.c. 268A; s.1(k).

[2] G.L.c. 71, s.34 was amended by Proposition 2 1/2 so that the "fiscal autonomy" previously enjoyed by school committees was modified. School committees no longer maintained full authority over their own budgets but rather became subject to the mayor's recommendation to the city council, and the council's vote to appropriate (or not appropriate) sufficient money to fund the bottom line figure of the school department budget see e.g., *Superintendent of Schools In Leominster v. Mayor of Leominster*, 386 Mass. 114,115(1982).

[3] G.L.c. 268A; s.19 provides an exemption for municipal employees to participate in matters of general policy if the interests of the municipal employee's family are shared by a substantial segment of the population. Without the opportunity to increase line items or the total budget, a vote on the total appropriation may be participation in a matter of general policy. We need not reach this issue, given our conclusion that the adoption of this budget does not involve a particular matter when there is no ability to influence or abstain from voting on line items. see, G.L.c 268A; s.19(b)(3).

[4] This conclusion is supported by the Supreme Judicial Court's statement in *Graham*, that a school committee member should not participate in a budget decision if his family member's "private right is directly and immediately concerned, at least if there is any controversy over the decision" *Id.* at 140. (emphasis added). In this case, the lack of controversy suggests that participation at this stage should be permitted. In another set of circumstances where a controversial vote were at stake, a different conclusion may be appropriate.